

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

77-6061

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RAY MARSHALL, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR, APPELLANT

v.

THE CHASE MANHATTAN BANK (NATIONAL
ASSOCIATION), APPELLEE

Appeal from the United States District Court
for the Southern District of New York

BRIEF FOR THE SECRETARY OF LABOR

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IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 77-6061

RAY MARSHALL, Secretary of Labor, United States
Department of Labor,

Plaintiff-Appellant,

v.

THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION),

Defendant-Appellee.

On Appeal From The United States District Court
For the Southern District of New York

BRIEF FOR RAY MARSHALL, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,
PLAINTIFF-APPELLANT

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PRELIMINARY STATEMENT

The decision of The Honorable Thomas P. Griesa dismissing the complaint is not reported; the Order and the transcript of proceedings are reproduced at App. 172 and 154, respectively. 1/

ISSUE PRESENTED FOR REVIEW

Whether the District Court erred in dismissing without adjudication on the merits an action brought by the Secretary of Labor (the Secretary) to enforce the provisions of Title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq., 88 Stat. 829 et seq.) ("ERISA"), by which action the Secretary sought to enjoin a trustee of an employee benefit plan covered by that title from obtaining a state court judgment approving the trustee's 1975 accounts, when section 502(e)(1) of ERISA vests exclusive jurisdiction of actions concerning 1975 fiduciary conduct in federal courts, and when under section 514(a) of ERISA, federal law supersedes all state law relating to covered employee benefit plans as of January 1, 1975.

STATEMENT OF THE CASE

Nature of the Case, Proceedings and Disposition Below

On December 30, 1976, the Secretary of Labor filed a complaint, App. 2, to enforce sections 502(e)(1) and 514(a) of ERISA,

1/ "App." references followed by a number (e.g. App. 1) are to the joint Appendix.

29 U.S.C. 1132(e)(1) and 1144(a). The complaint sought an injunction that would have required appellee The Chase Manhattan Bank (National Association) (hereinafter "Chase") to discontinue a portion of an action it had filed in a New York state court, App. 8, whereby it seeks approval of its accounts as trustee for an employee benefit plan for a period when the plan was subject to the provisions of ERISA. Before the defendant filed its answer, App. 146, counsel for the Secretary scheduled a pre-motion conference with Judge Griesa, pursuant to the Judge's directive governing the filing of motions, to discuss with opposing counsel and the court the Secretary's proposed motion for a preliminary injunction. At the conference, held on January 19, 1977, the court on its own motion announced a decision to dismiss the action. App. 170. An order dismissing the action was entered on January 26, 1977. App. 172.

Statement of Facts

Since 1961, Chase has been trustee of a trust fund connected with a single-employer, defined benefit pension plan now named Pension Plan for Wage Employees of Federal Sweets and Biscuit Company Inc. (the plan). App. 8, 16. Under the governing documents of the plan, Chase is to hold the corpus for investment at its discretion and for distribution from time to time on the directions of a Pension Board designated by the employer. App. 9, 17. The employer, Federal Sweets and Biscuit Company,

Inc. (Federal Sweets), which had been a Delaware corporation, was declared inoperative and void on April 15, 1973 by the State of Delaware for nonpayment of franchise taxes for two consecutive years. App. 49. Thereafter, on September 3, 1974, Federal Sweets was adjudicated bankrupt. App. 50. The members of the Pension Board last designated by Federal Sweets are believed by Chase to be deceased, and the Pension Board has given no distribution directions to Chase since April, 1972. App. 9. Chase has continued to make pension payments to nine former employees of Federal Sweets. App. 10. The corpus now amounts to approximately \$188,000. Id.

Chase wished to effect a termination of the plan and a distribution of the corpus. App. 8, 11, 148. To do so Chase commenced a proceeding in the Supreme Court of the State of New York to obtain authorization for a wind-up of the plan, which it proposed to effectuate under the supervision of one Harold Goldman, an attorney retained by some of the plan participants. App. 8, 11.

As part of the same proceeding, Chase is seeking the state court's approval of Chase's conduct as trustee for the calendar years 1970 through 1975. App. 13. On January 1, 1975, the fiduciary responsibility provisions of ERISA became effective with respect to private employee benefit plans subject to the Act, such as the plan involved here. 2/

2/ See ERISA section 414(a), 29 U.S.C. 1114(a).

The adjudication sought by Chase concerning its 1975 performance as an employee benefit plan fiduciary is, in the view of the Secretary of Labor, beyond the jurisdiction of the state court by virtue of the broad preemption provision contained in section 514 of ERISA, and the jurisdictional provisions of section 502 of ERISA. App. 4, 157.

Because of the harm which the Secretary believes would flow from Chase's continuing pursuit of the state court proceeding and from the potential (void) adjudication which might result from it, the Secretary first sought to secure from either Chase or the state court some action which would terminate that portion of the suit requiring a judgment that Chase be discharged from possible fiduciary liability for calendar year 1975. App. 155-56, 167. The Secretary through the Solicitor's office corresponded concerning these matters both with counsel for Chase, and with the State Court. Id. 3/

3/ By letter dated September 7, 1976, the Department of Labor advised counsel for Chase that, in the Department's view, the 1975 portion of the proceeding was beyond the jurisdiction of the state court. Chase declined to withdraw or modify its Petition, but undertook, at the Department of Labor's request, to seek a 60 day adjournment of the September 17, 1976, state court hearing. On September 17 the state court declined to grant an adjournment and took the matter under submission. By letter dated September 30, 1976, the Department of Labor advised The Honorable Abraham Gellinoff of the Supreme Court of the State of New York that in the Department's view the 1975 portion of the proceeding taken under submission by Judge Gellinoff on September 17 was beyond the state

Chase disagreed with the Secretary's view, both as to the coverage of ERISA and as to the effect of the preemption and exclusive jurisdiction provisions of the statute; and the state court proceeded with its adjudication, App. 152, 4/ of Chase's claim without any apparent consideration of the jurisdictional difficulty the Secretary had presented. Accordingly, this suit was instituted on December 30, 1976, because in the Secretary's view,

"The entry of any judgment by the state court with respect to the 1975 accounting will result in irreparable injury to the public interest in the uniform administration and enforcement of Title I of ERISA, for which the Secretary is responsible, and will complicate and burden the Secretary's enforcement and administration of ERISA, (a) by causing confusion among parties whose rights and responsibilities with respect to employee benefit plans are governed by ERISA; (b) by tending to discourage participants in plans covered by ERISA from enforcing their rights under federal law; (c) by causing plan trustees and administrators to rely improperly on the expectation that their responsibilities under ERISA have been or may be determined in such proceedings". (Complaint, para. 11, App. 5)

(footnote 3 cont'd)

court's jurisdiction. With this letter were enclosed copies of the Department's correspondence with Chase. By letter dated October 7, 1976 to Judge Gellinoff, counsel for Chase set forth with reasons and authority its disagreement with the Department's view. So far as the Secretary is aware, there has been no response by the court, either formal or informal, to either letter. However, on October 15, 1976, the state court issued an order appointing William Goodstein to serve as guardian ad litem of certain plan participants in the state court proceeding generally.

4/ See note 3/ above.

Thereafter, as set forth above, the suit was dismissed at the court's instance and without adjudication by order of January 26, 1977.

ARGUMENT

SUMMARY

The District Court erred in dismissing this action without adjudging the merits. The action was within the District Court's subject matter jurisdiction, and the complaint stated a claim upon which relief could be granted; therefore, the District Court had a duty to render a judgment. If the District Court's disposition of this case was an abstention, it was error because this case did not warrant an abstention, inasmuch as it does not fall within any of the three categories of precedents for abstention recently defined by the Supreme Court. Accordingly, the District Court's judgment of dismissal should be reversed.

I. INTRODUCTION

ERISA represents the culmination of almost ten years of work by Congress and the Executive Branch to develop uniform federal and nationally applicable standards for the administration of private sector employee pension and welfare benefit plans. In enacting ERISA, Congress intended and plainly stated that henceforth the law governing these plans would be a body of uniform federal law, established and applied exclusively by federal courts, except in a limited category of cases (involving claims by participants and beneficiaries against their plans for benefits and benefit rights determinations) which does not include the proceeding brought in the state court by Chase. The state court has begun to exercise jurisdiction in the matter, has taken Chase's submission sub judice and might at any time issue an order purporting to grant the relief sought by Chase. In the Secretary's view, the entry of such an order would interfere with the national and public interest in the maintenance under ERISA of a single, uniform system of federal regulation of these plans and would impair the exercise of rights conferred by ERISA on plan participants and beneficiaries.

The provisions of ERISA which the Secretary seeks to enforce are the following:

ERISA section 514, 29 U.S.C. §1144:

(a) Except as provided in subsection (b) of this section, the provisions of this title [title I] and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) [5/] and not exempt under section 4(b). This section shall take effect on January 1, 1975.

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

5/ ERISA section 4, 29 U.S.C. 1003, provides as follows:

(a) Except as provided in subsection (b) and in sections 201, 301, and 401, this title shall apply to any employee benefit plan if it is established or maintained --

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; . . .

* * *

(b) The provisions of this title shall not apply to any employee benefit plan if ---

(1) such plan is a governmental plan (as defined in section 3(32));

(2) such plan is a church plan (as defined in section 3(33)) with respect to which no election has been made under section 410(d) of the Internal Revenue Code of 1954;

(3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(4) such plan is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or

(5) such plan is an excess benefit plan (as defined in section 3(36)) and is unfunded.

ERISA section 502, 29 U.S.C. §1132:

[6/]

(e)(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this title brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

The broad pre-emption language of ERISA section 514(a), 29 U.S.C. §1144(a), providing that a state law is superseded insofar as it may "relate to" any employee benefit plan, effectuates the clear intent of Congress which was expressed by the Act's leading sponsors as follows:

. . .[T]he emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required -- but for certain exceptions -- the displacement of State action in the field of private employee benefit programs.

120 Cong. Rec. 29942. (1974)

(Statement of Senator Javits, ranking minority member of the Senate Committee on Labor and Public Welfare, urging passage of the H.R.2 substitute bill reported by committee of conference, which substitute was enacted as ERISA.)

6/ ERISA section 502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B), provides as follows:

- (a) A civil action may be brought --
 - (1) by a participant or beneficiary -
 - * * *
 - (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.

The resolution of earlier conflicts as to the desirable scope of federal preemption in favor of the broad position was deemed by Congressman Dent, Chairman of the Subcommittee on Labor of the House Committee on Education and Labor, to be one of ERISA's protective highlights:

Finally I wish to make note of what is to many the crowning achievement of this legislation, the reservation to Federal authority the sole power to regulate the field of employee benefit plans. With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation. . .
120 Cong. Rec. 29197. (1974)
(Statement of Congressman Dent).

An "accounting" and discharge from liability, traditionally available to trustees under state law prior to ERISA, was proposed for inclusion in ERISA; indeed, preservation of state court jurisdiction in an action for an accounting by a fiduciary was proposed. ^{7/} However, this proposal was not adopted, and the ERISA scheme does not include any provision for an action in a state court for an accounting.

II. THIS CASE WAS WITHIN THE SUBJECT MATTER JURISDICTION OF THE DISTRICT COURT.

It is provided in ERISA section 502(e)(1), 29 U.S.C. §1132(e)(1), in pertinent part, that

^{7/} See, e.g., H.R. 2, 93d Cong., 2d Sess., Sec. 699(b) (1974), as passed by the Senate on March 4, 1974. Sections 694 and 699 of this bill are reproduced in the addendum at the end of this brief.

"the district courts of the United States shall have exclusive jurisdiction of civil actions under this title brought by the Secretary..."

The Secretary's suit was authorized by ERISA section 502, 29 U.S.C. §1132, which provides in pertinent part as follows:

"(a) A civil action may be brought--

* * *

(5) except as otherwise provided in subsection (b), by the Secretary (A) to enjoin any act or practice which violates any provision of this title, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this title;"

The Secretary sued for declaratory and injunctive relief to enforce ERISA sections 514(a) and 502(e)(1), which deprive the state court of jurisdiction of the 1975 portion of the Chase proceeding. The Secretary asserts that Chase's state court suit is utterly inconsistent with the preemption and exclusive jurisdiction provisions of ERISA, Title I and that Chase's conduct in pursuing the suit and the impending state court decision pose a serious and immediate threat of harm to the uniformity and certainty of administration intended by Congress to be secured by ERISA. The Secretary's action is therefore brought to enforce the provisions of Title I. Section 502(a)(5)(B)(ii) is a grant of authority to the

Secretary to bring legal action where conduct contrary to the Act's purposes threatens the statutory scheme. This grant of authority to sue "to enforce any provisions of this title," found in section 502(a)(5)(B)(ii), is in addition to the grant to the Secretary of his authority to sue to restrain and redress violations, found in section 502(a)(5)(A) and (B)(i). Because the Secretary's action came within the grant of authority in section 502(a)(5)(B)(ii), it was an action "under this title" within the meaning of section 502(e)(1), which defines the District Court's subject matter jurisdiction for ERISA Title I cases.

III. THE COMPLAINT STATED A CLAIM UPON WHICH RELIEF COULD BE GRANTED.

The Secretary's complaint met the test as to the sufficiency of a claim based on a federal statute. The test is whether the Court is "prepared to say that nothing can be extracted from [the claim] that falls under the act of Congress, or at least that the claim is wholly frivolous." Hart v. B. F. Keith Vaudeville Exchange, 262 U.S. 271, 274 (1923) (Mr. Justice Holmes). See Radovich v. National Football League, 352 U.S. 445, 453 (1957). See also 2A J. Moore, Federal Practice para. 12.08, at 2271 (2d Ed. 1975).

IV. THE DISTRICT COURT DEPARTED FROM ITS DUTY TO DECIDE CASES WITHIN ITS JURISDICTION.

The District Court, in refusing to exercise jurisdiction in this case, departed from its fundamental duty to render

a judgment when its jurisdiction is properly invoked. This duty is not avoidable on the ground that the complainant must first exhaust the judicial remedies of state courts, Lane v. Wilson, 307 U.S. 268 (1939), McClellan v. Carland, 217 U.S. 268 (1910). No question of state law need be answered to dispose of the Secretary of Labor's claim under ERISA; but even if such a question were present and were uncertain under state law, the District Court's duty would be to decide it if necessary for a judgment on the Secretary's properly stated federal cause of action. Meredith v. Winter Haven, 320 U.S. 228 (1943).

V. THE DOCTRINE OF ABSTENTION IS NOT APPLICABLE HERE.

In exceptional circumstances, the doctrine of abstention has been relied upon by federal courts to justify their inaction in deference to state proceedings. Here, while abstention was urged on the District Court by the defendant's answer (para. 10), App. 147, the District Court did not expressly abstain when it dismissed the Secretary's complaint. Moreover, abstention would have been inappropriate, as this case does not fit within any of the three categories of matters, recently defined by the Supreme Court in Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976), under which the exceptional procedure of abstention may be justified. 8/

8/ A District Court in the Southern District of New York recently abstained in Cristina v. Department of State of the State of New York, 417 F. Supp. 1012 (S.D.N.Y. 1976) (Ward, J.), but only after quoting the Supreme Court's review of the three categories in Colorado River Water Conservation District, supra, and finding that the case before it was in both of the first two enumerated categories.

The first category consists of cases presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of pertinent state law. In this case, while the defendant's answer suggests a constitutional defect in ERISA, 9/ no question of state law is involved in the possible constitutional defense; thus, if it were necessary for a federal court to reach the constitutional defense, the issue would not be susceptible of being mooted or differently presented by a state court determination of pertinent state law. The second category of proper abstention cases consists of those cases in which federal construction of state law might be disruptive of state efforts to establish a coherent policy regarding a matter transcending the case at bar. Here, however, not only are state law questions absent, but also, through section 514 of ERISA, Congress effectively ended state regulation of covered employee pension and welfare benefit programs. The third category of cases, involving attempts to invoke

9/ Answer para. 7, App. 147. Defendant asserts that to the extent ERISA covers a pension plan of an employer who neither established nor maintained the plan after ERISA's effective date, ERISA is an enactment beyond the power of Congress because unsupported by the Commerce Clause.

federal jurisdiction to restrain state criminal, nuisance, or tax cases where, no bad faith or harrassment is evident, clearly does not even arguably include the present case.

Colorado River Water Conservation District, supra, held it proper for a District Court to have dismissed a suit in deference to state proceedings, even where abstention was improper, because that disposition was justified by considerations of wise judicial administration. In so deciding, the Supreme Court indicated that it was strongly influenced by the so-called McCarran amendment, 43 U.S.C. §666. In the McCarran amendment, Congress chose comprehensive state systems for adjudicating water rights in a river system as the means of avoiding inconsistent allocations of such rights, and therefore consented to joining the United States as a defendant in any suit for the adjudication of water rights; moreover, Congress expressly provided that the United States, when a party to any such suit, may not plead that the State laws are inapplicable or that the United States is not amenable thereto.

In the present case, the basic obligation of the District Court to render a judgment, its jurisdiction having been properly invoked, has not been cast into doubt by a Congressional policy turned toward state law, but rather was

made more urgent by the Congressional determination in ERISA that federal law is to supersede all state law relating to employee benefit plans. Far from choosing state substantive law and state decision making facilities as the means for ensuring uniform adjudication, as it found appropriate with respect to water rights in a river system, Congress deliberately and emphatically mandated that a single federal statute, embodying national standards for all covered plans, and applied exclusively (with narrow exceptions) by federal courts, will be the means for securing uniformity of regulation in this area. Therefore, should this Court, not finding abstention applicable, feel compelled by Colorado River Water Conservation District to consider principles of wise judicial administration -- by which the Supreme Court clearly meant principles of avoiding conflicting adjudications -- and should this Court look to congressional policy in the employee benefit plan context, the Court would have good reason to conclude that the District Court should have retained and decided this case.

The apparent rationale of the District Court for the dismissal was that the state court has the jurisdiction to decide its own jurisdiction, and should be permitted by a federal court to exercise it, especially when judicial economy of a sort might be gained by obviating the need for a second court's involvement; in other words, the state court should

be allowed to decide for itself that it has no jurisdiction. In answer to this, the Secretary points out that the issue of jurisdiction has been clearly articulated to the state court by the Department of Labor and Chase, and the state court, rather than proceeding to determine its own jurisdiction, has instead proceeded as if no jurisdictional difficulty had been presented. More importantly, while the District Court's rationale has a strong surface appeal, it appears on further examination of the question that the very determination whether the state court has jurisdiction of the accounting proceeding commenced by Chase necessitates decision of important questions of federal law, exclusive jurisdiction over which has been conferred on federal courts by ERISA section 502(e). The Secretary did not have the opportunity to bring fully to the attention of the District Court that even the jurisdictional determination would require the state court to resolve such questions as the following:

(1) Whether the pension plan involved in Chase's suit, established by an employer defunct at the time ERISA's fiduciary standards became effective, is covered by those standards at all. 10/

10/ Chase has argued to the Department of Labor that the language of the coverage provision of title I of ERISA, section 4(a), 29 U.S.C. 1003(a), extending coverage to "any employee benefit plan ... established or maintained ... by any employer engaged in commerce", applies only prospectively; thus, Chase argues, the subject plan is not covered by ERISA and none of ERISA's provisions may operate to defeat state court jurisdiction of the proceeding Chase commenced. The Secretary's position is that the term "employee benefit plan" appearing in the coverage provision includes a "pension plan" which is in turn, a plan "which was heretofore or is hereafter established or maintained by an employer ...". ERISA section 3(2), (3), 29 U.S.C. 1002(2), (3).

(2) Whether Chase's proceeding in state court is so similar to an action by participants and beneficiaries to recover benefits due under the plan (an action over which state court jurisdiction lies by virtue of ERISA section 502(a)(1)(B), 29 U.S.C. 1132(a)(1)(B)) that the exception to the §502(e) exclusive jurisdiction rule should be applied. 11/

(3) Whether an action by a plan fiduciary for a discharge of possible fiduciary liability is an action under Title I of ERISA within the meaning of the exclusive jurisdiction language of section 502(e)(1), 29 U.S.C. 1132(e)(1). 12/

11/ Section 502(e)(1) provides as follows:

(e)(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this title brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

Section 502(a)(1)(B) provides:

(a) A civil action may be brought --

(1) by a participant or beneficiary --

* * *

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan; (emphasis added)

thus, in the Secretary's view, there is state court jurisdiction only when the action is commenced by a participant or beneficiary.

12/ Chase contends that this action is not under Title 1. In the Secretary's view an action calling for application of standards of fiduciary conduct, a subject matter carefully and fully dealt with in Part 4 of Title 1, is an action under Title 1, if it is a proceeding judicially cognizable at all.

The Secretary is entitled to a federal adjudication if, as we believe, clear, a federal claim has been stated. ERISA sets forth a clear and rational legislative determination that claims such as that maintained by Chase for its 1975 state accounting are beyond the jurisdiction of the state court, and the Secretary asserts that serious and immediate harm to a carefully considered federal legislative program will result from state adjudication of Chase's fiduciary suit. It is neither an excessive federal intrusion into the state's judicial process, nor an unwarranted implication that the state court cannot rightly decide these matters, for a federal court to determine a controversy over which federal law gives it exclusive jurisdiction. Considerations of federalism, serious concerns and carefully considered by the Secretary before this suit was brought, and again reassessed after the dismissal, do not constitute an appropriate basis for the District Court to ground a dismissal of a federal action brought by the Executive Branch official charged with administration and enforcement responsibility for a federal program. Where, as here, the construction of ERISA provisions involved is sufficiently important to the Secretary, for purposes of controlling fiduciary

initiatives for accountings in state courts and for other ERISA enforcement purposes, 13/ to invoke the federal judicial power, and especially where the congressional policy to have the provisions of Title I of ERISA (as opposed to the terms of a plan) construed by federal courts is so clear, there is no lawful basis for the federal court, which had jurisdiction, to refuse to judge, even by deferring to the state court for the limited purpose of its determining its jurisdiction.

13/ Congress clearly intended that the Secretary of Labor have an opportunity to present his views in any private litigation under ERISA; thus it provided that the Secretary will receive a copy of the complaint in most actions under Title I, and will have an unconditional right to intervene, ERISA section 502(h), 29 U.S.C. §1132(h). If a plaintiff in such an action is free to commence it in state court, notwithstanding the presence of ERISA issues requiring, in our view, that it be brought in a federal court having exclusive jurisdiction under ERISA section 502(e), the plaintiff is likewise free from the obligation to apprise the Secretary of the existence of the proceeding, and thus unilaterally to preclude or at least impede the effective assertion of the national and public interest by the Secretary.

CONCLUSION

For the foregoing reasons, the District Court's order of January 26, 1977, dismissing without adjudication the Secretary's claim for an injunction under title 1 of ERISA, should be reversed.

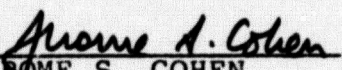
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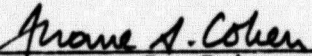
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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May, 1977,
two copies of this brief and one copy of the Appendix
were mailed, postage prepaid, to the following counsel
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93^d CONGRESS
2^d SESSION

H. R. 2

IN THE SENATE OF THE UNITED STATES

MARCH 4, 1974

Received; read twice, considered, amended, read the third time, and passed

[Strike out all after the enacting clause and insert the part printed in *italics*]

AN ACT

To provide for pension reform.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 ~~SHORT TITLE AND TABLE OF CONTENTS~~
- 4 ~~SECTION 1. This Act may be cited as the "Employee~~
- 5 ~~Benefit Security Act of 1974".~~

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1 competent jurisdiction, State or Federal, or the United States
2 District Court for the District of Columbia, without respect
3 to the amount in controversy and without regard to the citi-
4 zenship of the parties. Where such action is brought in a dis-
5 trict court of the United States, it may be brought in the
6 district where the plan is administered, where the breach took
7 place, or where a defendant resides or may be found, and
8 process may be served in any other district where a defend-
9 ant resides or may be found. Such actions may also be
10 brought by a participant or beneficiary as a representative
11 party on behalf of all participants or beneficiaries similarly
12 situated. In all civil actions authorized by this Act or the
13 Welfare and Pension Plans Disclosure Act, attorneys ap-
14 pointed by the Secretary shall represent the Secretary except
15 as provided in section 518(a) of title 28, United States
16 Code (relating to litigation before the Supreme Court of the
17 United States).

18 SEC. 694. JURISDICTION OF COURTS.

19 Suits by a participant or beneficiary for benefits from
20 an employee benefit plan or fund, subject to the Welfare and
21 Pension Plans Disclosure Act, may be brought in any court
22 of competent jurisdiction, State or Federal, or the United
23 States District Court for the District of Columbia, without
24 respect to the amount in controversy and without regard to
25 the citizenship of the parties, against any such plan or fund

1 to recover benefits due him required to be paid from such
2 plan or fund pursuant to the document or documents govern-
3 ing the establishment or operation of the plan or fund, or to
4 clarify his rights to future benefits under the terms of the
5 plan. Where such action is brought in a district court of the
6 United States, it may be brought in the district where the
7 plan is administered, or where a defendant resides or may
8 be found, and process may be served in any other district
9 where a defendant resides or may be found. Such actions may
10 also be brought by a participant or beneficiary as a rep-
11 resentative party on behalf of all participants or beneficiaries
12 similarly situated.

13 SEC. 695. PROCEDURE.

14 (a) SERVICE.—The jurisdiction of any court competent
15 to hear an action brought by a participant or beneficiary
16 under section 693 or 694 shall be conditioned upon the
17 service of a copy of the complaint upon the Secretary by
18 certified mail, who shall have the right in his discretion to
19 intervene in the action.

20 (b) REMOVAL.—Notwithstanding any other law, the Sec-
21 retary shall have the right to remove an action brought
22 under section 693 or 694 from a State court to a district
23 court of the United States, if the action is one seeking relief
24 of the kind the Secretary is authorized to sue for under this
25 Act. Any such removal shall be prior to the trial of the action

1 or proceeding shall be commenced within five years of the
2 date of discovery of such violation.

3 SEC. 699. RELATIONSHIP TO STATE LAWS.

4 (a) PRE-EMPTION OF STATE LAWS.—It is hereby de-
5 clared to be the express intent of Congress that, except for
6 actions authorized by section 694 of this title, the provisions
7 of this Act or the Welfare and Pension Plans Disclosure
8 Act shall supersede any and all laws of the States and of
9 political subdivisions thereof insofar as they may now or here-
10 after relate to the subject matters regulated by this Act or
11 the Welfare and Pension Plans Disclosure Act, except that
12 nothing herein shall be construed—

13 (1) to exempt or relieve any employee benefit plan
14 not subject to this Act or the Welfare and Pension Plans
15 Disclosure Act from any law of any State;

16 (2) to exempt or relieve any person from any law
17 of any State which regulates insurance, banking, or se-
18 curities or to prohibit a State from requiring that there
19 be filed with a State agency copies of reports required by
20 this Act to be filed with the Secretary; or

21 (3) to alter, amend, modify, invalidate, impair, or
22 supersede any law of the United States other than the
23 Welfare and Pension Plans Disclosure Act or any rule
24 or regulation issued under any law except as specifically
25 provided in this Act.

1 (b) *JURISDICTION OF STATE COURTS.*—Subsection
2 (a) of this section shall not be deemed to prevent any State
3 court from asserting jurisdiction in any action requiring or
4 permitting an accounting by a fiduciary during the operation
5 of an employee benefit fund subject to the Welfare and
6 Pension Plans Disclosure Act or upon the termination thereof
7 or from asserting jurisdiction in any action by a fiduciary
8 requesting instructions from the court or seeking an inter-
9 pretation of the trust instrument or other document govern-
10 ing the fund. In any such action—

11 (1) the provisions of this Act and the Welfare and
12 Pension Plans Disclosure Act shall supersede any and
13 all laws of the State and of political subdivisions thereof,
14 insofar as they may now or hereafter relate to the fiduci-
15 ary, reporting, and disclosure responsibilities of persons
16 acting for or on behalf of employee benefit plans or on
17 behalf of employee benefit funds subject to the Welfare
18 and Pension Plans Disclosure Act except insofar as they
19 may relate to the amount of benefits due beneficiaries
20 under the terms of the plan;

21 (2) notwithstanding any other law, the Secretary
22 or, in the absence of action by the Secretary, a partici-
23 pant or beneficiary of the employee benefit plan or fund

1 affected by this subsection, shall have the right to remove
2 such action from a State court to a district court of
3 the United States if the action involves an interpretation
4 of the fiduciary, or reporting, and disclosure responsi-
5 bilities of persons acting on behalf of employee benefit
6 plans subject to the Welfare and Pension Plans Dis-
7 closure Act;

8 (3) the jurisdiction of the State court shall be con-
9 ditioned upon—

10 (A) written notification, sent to the Secretary
11 by certified mail at the time such action is filed,
12 identifying the parties to the action, the nature of
13 the action, and the plan involved; and satisfactory
14 evidence presented to the court that the participants
15 and beneficiaries have been adequately notified with
16 respect to the action; and

17 (B) the right of the Secretary or of a partici-
18 pant or beneficiary to intervene in the action as an
19 interested party.

20 SEC. 699A. RECRIMINATION AGAINST EMPLOYEES AND
21 OTHER PERSONS.

22 It shall be unlawful for any person to discharge, fine,
23 suspend, expel, discipline, or discriminate against a partici-